

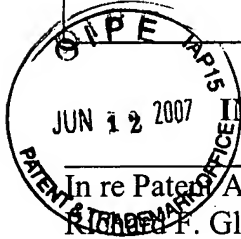
I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being deposited as Express Mail, Airbill No. EV521705239US in an envelope addressed to: MS Appeal Brief - Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on the date shown below.

Dated: June 11, 2007

Signature:

*Jennifer C. Giffi*  
(Jennifer C. Giffi)

Docket No.: SMCY-P01-104  
(PATENT)



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Patent Application of:  
Richard F. Gladney

Confirmation No.: 8016

Application No.: 10/671,903

Art Unit: 3673

Filed: September 26, 2003

Examiner: Sunil Singh

For: MATTRESS CENTER RIDGE  
COMPENSATOR

**APPEAL BRIEF UNDER 37 C.F.R. § 41.37**

MS Appeal Brief - Patents  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

This Appeal Brief is submitted in response to the Final Office Action mailed July 25, 2006, in support of the Pre-Appeal Brief and Notice of Appeal filed on October 27, 2006, and in response to the Notice of Panel Decision from Pre-Appeal Brief review mailed December 12, 2006.

(i). **REAL PARTY OF INTEREST**

Appellants respectfully advise the Board that the real party in interest in the above-identified patent application is Dreamwell, Ltd., a limited liability company organized and existing under the laws of the State of Nevada, and having an office and place of business at 2325-B Renaissance Drive, Las Vegas, Nevada 89119, which is the assignee of this application

06/13/2007 SSITHIB1 00000001 181945 10671903  
02 FC:1402 500.00 DA

(ii). RELATED APPEALS AND INTERFERENCES

Appellants respectfully advise the Board that there are no other appeals or interferences known to appellants, their legal representative, or their assignee that will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(iii). STATUS OF CLAIMS

Claims 1, 2, 4, 6-13, and 18-29 are rejected in this application. Claims 14-17 were previously withdrawn. Appellants hereby cancel claims 14-17 without prejudice. Claims 3 and 5 were previously canceled. Claims 1, 2, 4, 6-13, and 18-29 are pending and on appeal. Claims 1, 2, 4, 6-13, and 18-29 were finally rejected in the Final Office Action dated July 25, 2006. Claims 1, 18, 20, 21, and 23 are independent claims; all other pending claims depend upon one or more of the independent claims. No claims have been allowed.

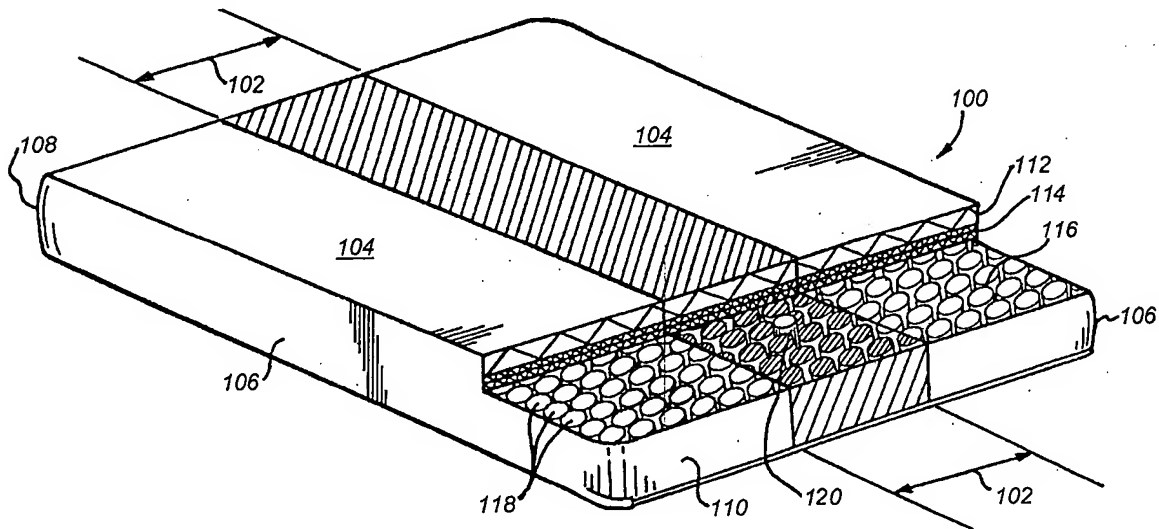
(iv). STATUS OF AMENDMENTS

Appellants have not submitted any amendment pursuant to 37 C.F.R. § 1.116 or in the reply to the July 25, 2006 Final Office Action (hereinafter "Office Action"), from which this appeal is being sought.

(v). SUMMARY OF CLAIMED SUBJECT MATTER

Appellants' independent claim 1 includes, but is not limited to, a mattress having a head end, a foot end, a first side, a second side, and a center region that traverses the mattress from the head end to the foot end. The center region may include one or more materials other than a single air bladder that mitigate the emergence of a center ridge over repeated uses of the

mattress. The center region may have a width of between about two inches and about twelve inches. Fig. 1 of the present application illustrates an exemplary embodiment of claim 1.



**Fig. 1 of the Present Application**

Independent claim 18 recites subject matter similar to that of claim 1, including that the center region has one or more materials other than a single air bladder having a firmness reduced or increased relative to other regions of the mattress.

Independent claim 20 recites subject matter similar to that of claim 1, including a compensation means other than adjusting the inflation of a single air bladder for reducing or increasing a firmness of the center region relative to other regions of the mattress.

Independent claim 21 recites a method for manufacturing a mattress, including constructing a first region and a second region of one or more materials having a first firmness wherein the first region and the second region are configured to provide a sleeping surface to one or more users of the mattress. Then, constructing a center region between the first region and the second region wherein the center region is constructed of one or more materials other than a single air bladder that together have a second firmness different than the first firmness. The center region may also have a width of between about two inches and about twelve inches.

Independent claim 23 recites subject matter similar to that of claim 1, including that the center region has one or more adjustable members other than a single air bladder which is controllable to adjust the center region in response to an emerging center ridge.

Support in the specification for claims 1, 18, 20, 21, and 23 is found at least in the locations indicated in the following tables:

Claim 1	The Specification
A mattress comprising: a head end;	See, e.g., Fig. 1, "head end 108" Pg. 5-6, par. 0017 and 0019 Pg. 2, par. 0006-0008
a foot end;	See, e.g., Fig. 1, "foot end 110" Pg. 5-6, par. 0017 and 0019 Pg. 2, par. 0006-0008
a first side and a second side; and	See, e.g., Fig. 1, "sides 106" Pg. 5-6, par. 0017 and 0019 Pg. 2, par. 0006-0008
a center region traversing the mattress from the head end to the foot end, the center region including one or more materials other than a single air bladder that mitigate the emergence of a center ridge over repeated uses of the mattress, the center region having a width of between about two inches and about twelve inches.	See, e.g., Fig.1, "center region 102" Pg. 5-6, par. 0017 and 11019 Pg. 2, par. 0006-0008 Originally filed claim 1 includes "one or more materials." Pg. 7, par. 0022 "any material or materials" include "open coils, pocket coils, a monolithic or composite foam (such as viscoelastic foam), fluids or gasses in one or more bladders, and so forth, or any combination of these."

Claim 18	The Specification
A mattress comprising: a head end;	See, e.g., Fig. 1, "head end 108" Pg. 5-6, par. 0017 and 0019 Pg. 2, par. 0006-0008
a foot end;	See, e.g., Fig. 1, "foot end 110" Pg. 5-6, par. 0017 and 0019 Pg. 2, par. 0006-0008
a first side and a second side;	See, e.g., Fig. 1, "sides 106" Pg. 5-6, par. 0017 and 0019 Pg. 2, par. 0006-0008
a center region traversing the mattress from the head end to the foot end, the center region including one or more materials other than a single air bladder having a firmness reduced or increased relative to other regions of the mattress, the center region having a width of between about two inches and about twelve inches.	See, e.g., Fig.1, "center region 102" Pg. 8, par. 0023, "stiffen" or "reduce stiffness." Pg. 5-6, par. 0017 and 11019 Pg. 2, par. 0006-0008 Originally filed claim 18 includes "one or more materials." Pg. 7, par. 0022 "any material or materials" include "open coils, pocket coils, a monolithic or composite foam (such as viscoelastic foam), fluids or gasses in one or more bladders, and so forth, or any combination of these."

Claim 20	The Specification
A mattress comprising: a head end;	See, e.g., Fig. 1, "head end 108" Pg. 5-6, par. 0017 and 0019 Pg. 2, par. 0006-0008
a foot end;	See, e.g., Fig. 1, "foot end 110" Pg. 5-6, par. 0017 and 0019 Pg. 2, par. 0006-0008

a first side and a second side;	See, e.g., Fig. 1, "sides 106" Pg. 5-6, par. 0017 and 0019 Pg. 2, par. 0006-0008
a center region separated from the first side and the second side and traversing the mattress from the head end to the foot end, the center region having a width of between about two inches and about twelve inches; and	See, e.g., Fig.1, "center region 102" Pg. 5-6, par. 0017 and 11019 Pg. 2, par. 0006-0008
a compensation means other than adjusting the inflation of a single air bladder for reducing or increasing a firmness of the center region relative to other regions of the mattress.	Pg. 8, par. 0023, "controllably stiffen ...or reduce the stiffness." Pg. 7, par. 0022 "any material or materials" include "open coils, pocket coils, a monolithic or composite foam (such as viscoelastic foam), fluids or gasses in one or more bladders, and so forth, or any combination of these."

<b>Claim 21</b>	<b>The Specification</b>
A method for manufacturing a mattress, the method comprising: constructing a first region and a second region of one or more materials having a first firmness, the first region and the second region being configured to provide a sleeping surface to one or more users of the mattress;	See, e.g., Fig. 1 Pg. 4, par. 0013
constructing a center region between the first region and the second region, the center region being constructed of one or more materials other than a single air bladder that together have a second firmness different than the first firmness, the center region having a width of between about two inches	See, e.g., Fig. 1 Pg. 4, par. 0013 Pg. 7, par. 0022 "any material or materials" include "open coils, pocket coils, a monolithic or composite foam (such as viscoelastic foam), fluids or

and about twelve inches.	gasses in one or more bladders, and so forth, or any combination of these."
--------------------------	---

<b>Claim 23</b>	<b>The Specification</b>
A mattress comprising: a head end;	See, e.g., Fig. 1, "head end 108" Pg. 5-6, par. 0017 and 0019 Pg. 2, par. 0006-0008
a foot end;	See, e.g., Fig. 1, "foot end 110" Pg. 5-6, par. 0017 and 0019 Pg. 2, par. 0006-0008
a first side and a second side;	See, e.g., Fig. 1, "sides 106" Pg. 5-6, par. 0017 and 0019 Pg. 2, par. 0006-0008
a center region traversing the mattress from the head end to the foot end, the center region including one or more adjustable members other than a single air bladder controllable to adjust the center region in response to an emerging center ridge, the center region having a width of between about two inches and about twelve inches.	See, e.g., Fig.1, "center region 102" Pg. 5-6, par. 0017 and 11019 Pg. 2, par. 0006-0008 Pg. 8, par. 0023, "one or more adjustable members 120" and "controllably stiffen ...or reduce the stiffness." Pg. 7, par. 0022 "any material or materials" include "open coils, pocket coils, a monolithic or composite foam (such as viscoelastic foam), fluids or gasses in one or more bladders, and so forth, or any combination of these."

(vi). GROUND OF REJECTION TO BE REVIEWED ON APPEAL

The following grounds of rejection are to be reviewed on this appeal:

Whether claims 1, 2, 4, 6-13, and 18-29 stand rejected under 35 U.S. C. 112, first paragraph as failing to comply with the written description requirement.

Whether claims 1, 2, 6, 9, and 18-28 stand rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 2,859,505 ("Jarvis").

Whether claims 4 and 29 stand rejected 35 U.S.C. 103(a) as being unpatentable over Jarvis.

Whether claims 1, 2, 4, 6-8, 18-22, 24-27, and 29 stand rejected under 35 U.S.C. 103(a) over the combination of U.S. Patent No. 5,579,549 ("Selman et al.") in view of U.S. Patent No. 5,077,849 ("Farley '849) or U.S. Patent No. 6,003,179 ("Farley '179").

Whether claims 9-11 stand rejected under 35 U.S.C. 103(a) over the combination of U.S. Patent No. 5,579,549 ("Selman et al.") in view of U.S. Patent No. 5,077,849 ("Farley '849) or U.S. Patent No. 6,003,179 ("Farley '179") in further view of U.S. Patent No. 4,092,749 ("Klancnik").

Whether claims 9, 12, and 13 stand rejected under 35 U.S.C. 103(a) over the combination of U.S. Patent No. 5,579,549 ("Selman et al.") in view of U.S. Patent No. 5,077,849 ("Farley '849) or U.S. Patent No. 6,003,179 ("Farley '179") in further view of U.S. Patent No. 4,086,675 ("Talbert et al.") or U.S. Patent No. 5,537,699 ("Bonaddio et al.") or U.S. Patent No. 3,516,901 ("Fultz et al.").

Whether claims 1, 2, 4, 6-8, 18-22, 24-27, and 29 stand rejected under 35 U.S.C. 103(a) over the combination of U.S. Patent No. 6,041,459 ("Nunez et al.") in view of U.S. Patent No. 5,077,849 ("Farley '849) or U.S. Patent No. 6,003,179 ("Farley '179").



Whether claims 9-11 stand rejected under 35 U.S.C. 103(a) over the combination of U.S. Patent No. 6,041,459 ("Nunez et al.") in view of U.S. Patent No. 5,077,849 ("Farley '849) or U.S. Patent No. 6,003,179 ("Farley '179") in further view of U.S. Patent No. 4,092,749 ("Klancnik").

Whether claims 9, 12-13 stand rejected under 35 U.S.C. 103(a) over the combination of U.S. Patent No. 6,041,459 ("Nunez et al.") in view of U.S. Patent No. 5,077,849 ("Farley '849) or U.S. Patent No. 6,003,179 ("Farley '179") in further view of U.S. Patent No. 4,086,675 ("Talbert et al.") or U.S. Patent No. 5,537,699 ("Bonaddio et al.") or U.S. Patent No. 3,516,901 ("Fultz et al.").

(vii). ARGUMENT

A. The Rejection under 35 U.S.C. §112, first paragraph

Claims 1, 2, 4, 6-13, and 18-29 are finally rejected under 35 U.S. C. 112, first paragraph as failing to comply with the written description requirement. Appellants respectfully traverse this rejection and request that it be overturned for at least the reasons set forth below.

In the Office Action, the Examiner asserts that the specification does not literally state the negative limitation "other than a single air bladder." The Office Action alleges that:

All the independent claims call for "other than a single air bladder", this negative limitation was never described in the originally filed disclosure, and therefore, it constitutes new matter.

However, in *Ex Parte Parks*, the Board of Patent Appeals and Interferences stated:

Adequate description under the first paragraph of 35 U.S.C. 112 does not require literal support for the claimed invention. Rather, it is sufficient if the originally-filed disclosure would have conveyed to one having ordinary skill in the art that an appellant had possession of the concept of what is claimed. (See *Ex Parte Parks*, 30 USPQ2d 1234, 1236 (Bd. Pat. App. & Inter. 1993) citing *In re Herschler*, 591 F.2d 693, 200 USPQ [\*5] 711 (CCPA 1979); *In re Edwards*, 568

*F.2d 1349, 196 USPQ 465 (CCPA 1978); In re Wertheim, 541 F.2d 257, 191 USPQ 90 (CCPA 1976). In re Anderson, 471 F.2d 1237, 176 USPQ 331 (CCPA 1973)).*

MPEP § 2173.05(i) also states "If alternative elements are positively recited in the specification, they may be explicitly excluded in the claims." More particularly, *In re Johnson* states "[the] specification, having described the whole, necessarily describes the part remaining" (See *In re Johnson*, 558 F.2d 10008, 1019, 194 USPQ 187, 196 (CCPA 1977)).

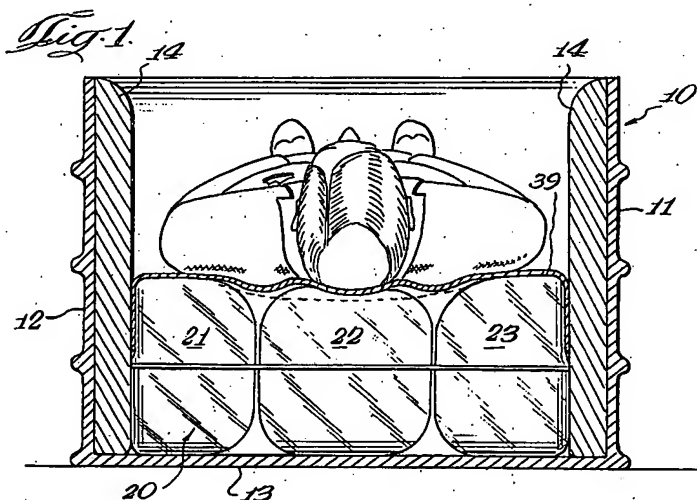
The Application, as originally filed, defines "any material or materials" as "including open coils, pocket coils, a monolithic or composite foam (such as viscoelastic foam), fluids or gasses in one or more bladders, and so forth, or any combination of these" (See Application, page 7, para. 22). The Application, as originally filed, also discloses "firmer materials (for, e.g., foam or air bladders), and so forth" (See Application, page 7, para. 22). It was well known to one having ordinary skill that air includes a combination of gasses such as oxygen and nitrogen. Base claim 1, as originally filed, recites "a center region traversing the mattress from the head end to the foot end, the center region including one or more materials that mitigate the emergence of a center ridge over repeated uses of the mattress." Because the originally filed base claim 1 is part of the specification, the Application, as originally filed, positively discloses that the center region can have one or more materials including gasses in one or more bladders, which includes a single air bladder. The Application, as originally filed, also positively discloses that the center region can have one or more materials such as, for example, open coils, monolithic or composite foam, fluids or gasses in one or more bladders, or any combination of these other than a single air bladder. Therefore, the originally-filed specification clearly conveys to one having ordinary skill in the art that the Appellant had possession of the concept of what is now claimed in base claims 1, 18, 20, 21, and 23.

Because alternative materials other than a "single air bladder" were disclosed in the application as originally filed, the negative limitation "other than a single air bladder" does not "introduce new concepts and violate the description requirement of the first paragraph of 35 U.S.C. 112" (See *Ex Parte Grasselli*, 231 USPQ 393 (Bd. App. 1983)).

Because the Application as originally filed, positively recites one or more bladders including air bladders (i.e., a single air bladder) as an alternative element, the exclusion of a "single air bladder," as recited in base claims 1, 18, 20, 21, and 23 does not constitute new matter. Therefore, Appellants respectfully request that the Board overturn the §112 Rejection of claims 1, 2, 4, 6-13, and 18-29.

B. The Rejection under 35 U.S.C. §102(b)

Claims 1, 2, 6, 9, and 18-28 are finally rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 2,859,505 ("Jarvis"). Appellants respectfully traverse this rejection and request that it be overturned for at least the reasons set forth below.



**Fig. 1 of Jarvis showing Casket Mattress**

Jarvis is concerned with positioning a dead body in a casket and has its center region positioned directly below the body as opposed to the present invention that is concerned with countering center ridge formation which occurs because users do not usually lie on the center region of the mattress. Jarvis teaches away from using any materials other than for a single air bladder or chamber 22 to ensure that the mattress "is relatively light as compared with the cotton previously employed" (See Jarvis, col. 2, lines 67-69). Thus, Jarvis does not teach or suggest "including one or more materials other than a single air bladder" as recited in base claims 1, 18, 20, 21, and 23.

Because Jarvis does not teach, or even suggest, all of the elements of base claims 1, 18, 20, 21, and 23, the §102 Rejection of base claims 1, 18, 20, 21, and 23 should be overturned by the Board. Because claims 2, 6, 9, 19, 22, and 25-28 depend from, and are limited by, base claims 1, 18, 20, 21, and 23 respectively, the §102 Rejection of these claims should also be overturned by the Board.

C. The Rejection of Claims 4 and 29 under 35 U.S.C. §103(a)

Claims 4 and 29 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 2,859,505 ("Jarvis"). Appellants respectfully traverse this rejection and request that it be overturned for at least the reasons set forth below.

Jarvis does not teach or suggest "including one or more materials other than a single air bladder" as recited in base claim 1. Because Jarvis does not teach or suggest all of the elements of base claim 1, Jarvis does not teach or suggest all of the elements of dependent claims 4 and 29. Therefore, there is no prima facie case of obviousness and the Board should overturn the §103 Rejection of claims 4 and 29.

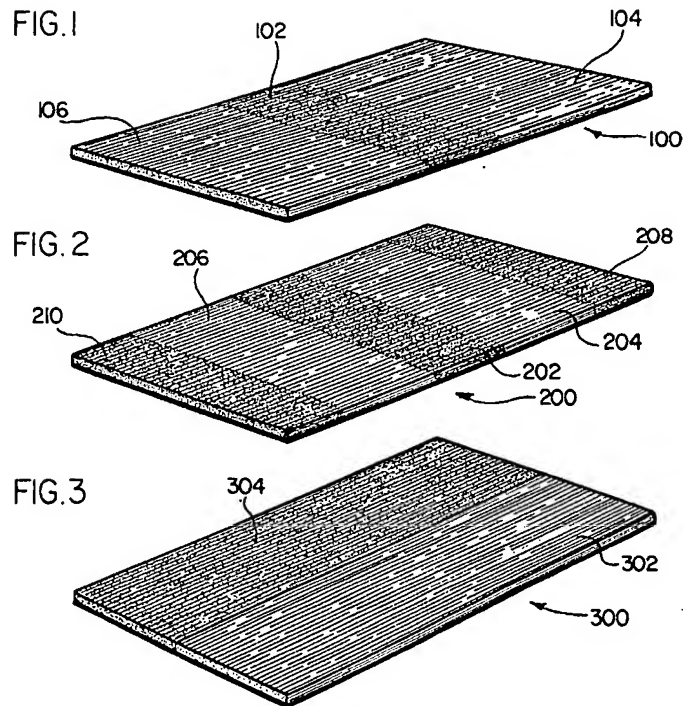
D. The Rejection of Claims 1, 2, 4, 6-8, 18-22, 24-27 and 29 under 35 U.S.C. §103(a) over Selman et al. in view of Farley '849 or Farley '179

Claims 1, 2, 4, 6-8, 18-22, 24-27, and 29 are finally rejected under 35 U.S.C. 103(a) over the combination of U.S. Patent No. 5,579,549 ("Selman et al.") in view of U.S. Patent No. 5,077,849 ("Farley '849") or U.S. Patent No. 6,003,179 ("Farley '179"). Appellants respectfully traverse this rejection and request that it be overturned for at least the reasons set forth below.

For an office action to establish a prima facie case of obviousness against a claim, the prior art reference or references used to form the rejection must, either alone or in combination, teach or suggest all the claim limitations. MPEP § 2143.

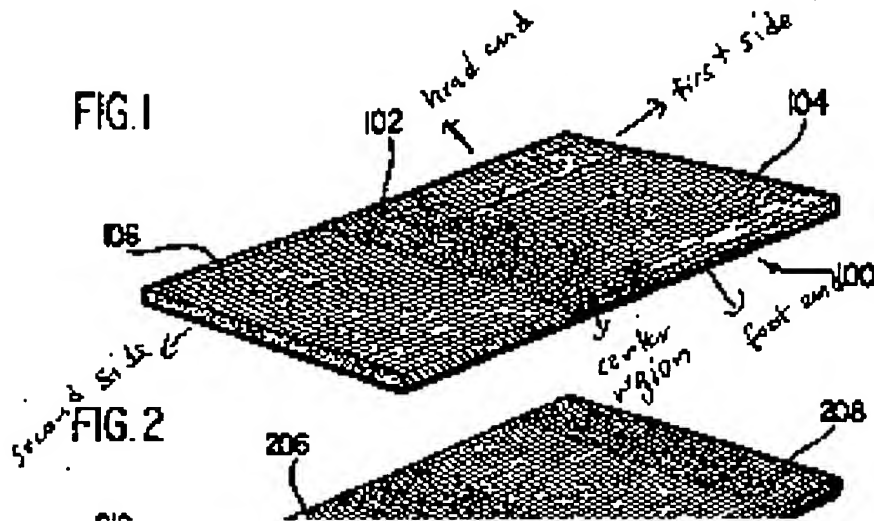
In the Office Action, the Examiner asserts that Selman et al. teach the limitation "a center region traversing the mattress from the head end to the foot end" as recited in base claims 1, 18, and 20. Appellants respectfully disagree.

Selman et al. disclose a mattress with selected zones of firmness to provide different firmness to different portions of a person's body or to provide different support to each of two persons using a multi-user mattress. Selman et al. define "a planar insulator pad 100 having a center portion 102, a head portion 104, and a foot portion 106" (See Selman et al., col. 3, lines 19-22). Selman et al. also state "The center of the mattress is selected as a zone of extra firmness because the center must often bear the most weight during sleeping" (See Selman et al., col. 1, lines 27-29). Selman et al. clearly indicate that the center portion 102 is configured to provide support to the midsection of a person while the head portion 104 and foot portion 106 are configured to provide different firmness to the person's head and foot portions. Fig. 1 clearly shows the head portion 104, the foot portion 106, and the center portion 102 that extends from side to side as opposed to "traversing the mattress from the head end to the foot end" as recited in base claims 1, 18, 20, and 21. In fact, the closest embodiment to the present invention appears to be illustrated in Fig. 3, which shows "two vertically divided sections 302,304" that extend from the head end to foot end (See Selman et al., col. 4, lines 60-67). Fig. 3 clearly illustrates that Selman et al. were never interested in, never considered, and do not teach or suggest "a center region traversing the mattress from the head end to the foot end" as recited in base claims 1, 18, 20, and 21.



**Figs. 1-3 of Selman et al. showing head and foot ends with center region traversing from side to side as opposed to from head to foot end**

However, the Examiner insists that he is allowed to interpret the position of the head portion and foot portion to be on the sides of the pad 100. The Examiner supports this alleged interpretation by his own modification of Fig. 1 in Selman et al. as shown below in the Marked-up Fig. 1 in the Examiner's own handwriting (Emphasis Added). There is no support whatsoever in the specification of Selman et al. for the Examiner's alleged interpretation. Selman et al. actually teach away from the Examiner's alleged interpretation. For example, Fig. 1 clearly shows the head portion 104 and foot portion 106 while Fig. 2 shows "end portions 208,210" (See Selman et al. col. 3, lines 21-22 and col. 4, lines 56-57).



**Marked-up Fig. 1 of Selman et al. as Modified by the Examiner**

In fact, the only support for the Examiner's alleged interpretation is the Examiner's own Marked-up Fig. 1 that is provided in the Office Action. While the same functional element may be labeled or named differently between references, the Examiner's alleged interpretation, as shown in Marked-up Fig. 1, actually changes the function or purpose of the center portion 102 from providing a different firmness to the mid-section of a person as intended and disclosed by Selman et al.

Thus, the Examiner's alleged interpretation is improper for the following reasons:

- 1) There is no support for the Examiner's alleged interpretation whatsoever in Selman et al.
- 2) The Examiner's alleged interpretation of the head end and foot end is contrary the teaching and interpretation of the head end and foot end provided by Selman et al.
- 3) The Examiner's alleged interpretation of the head end and foot end changes the functionality of the center portion 102 which is contrary to the intended and suggested function or purpose disclosed by Selman et al.

In fact, it is clear that the Examiner is not interpreting the specification of Selman et al., but is introducing his own modifications to Selman et al. as indicated by the Examiner's

own Marked-up Fig. 1 presented in the Office Action. Otherwise, there would be no need for the Examiner to modify Fig. 1 of Selman et al.

Because there is no support whatsoever in Selman et al. for the Examiner's alleged interpretation, it is clear that Selman et al. does not teach or suggest "a center region traversing the mattress from the head end to the foot end" as recited in base claims 1, 18, 20, and 21.

Farley '849, which discloses a support pad, does not make up for the deficiency of Selman et al. As shown in Fig. 24 below, Farley '849 teaches portions that traverse the pad from side to side, not from the head end to foot end. For example, Fig. 25 shows a posturizer with a "head support area 201" and a "tail support area 207 and the other end of the posturizer for supporting the legs and feet of a body" (See Farley '849, lines 41-68). Also, Farley '849 does not teach or suggest "a center region having a width of between about two inches and about twelve inches" because region 207 of Farley '849 is not "a center region traversing the mattress from the head end to the foot end" as recited in base claim 1.

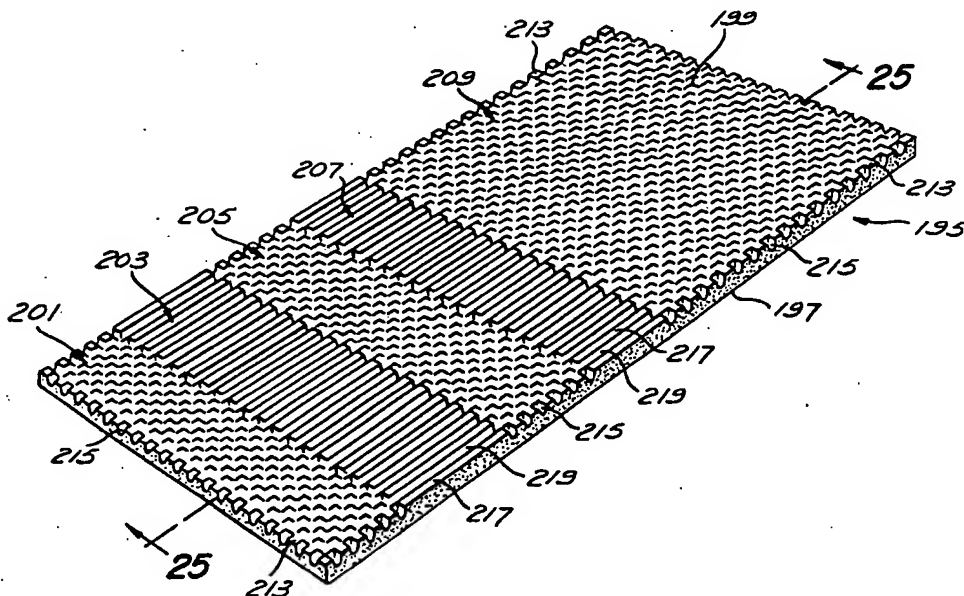
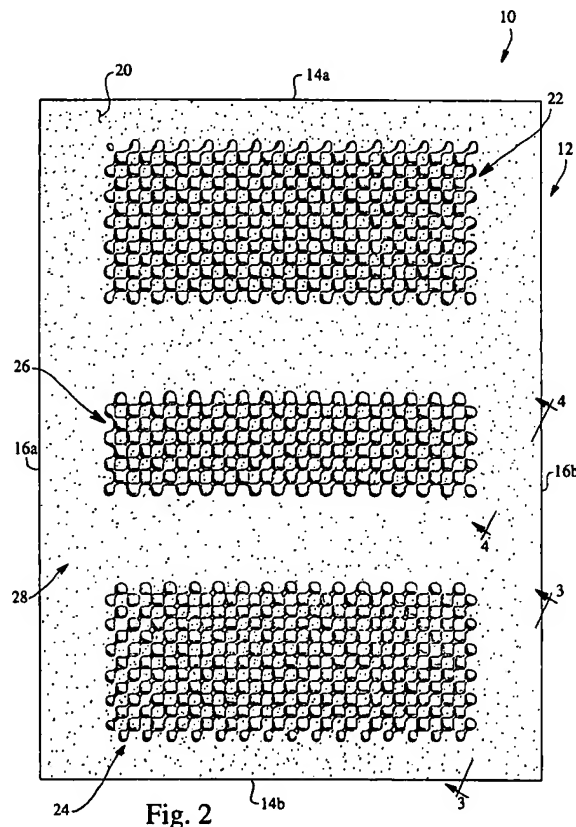


Fig. 25 of Farley '849



Farley '179, which discloses a anatomic support surface, also does not make up for the deficiency of Selman et al. As shown in Fig. 2 below, Farley '179 teaches portions that extends from side to side, not from the head end to foot end. For example, Fig. 2 shows "shoulder, foot and tail support regions 22, 24, 26" (See Farley '179, col. 5, lines 33-36). Also, Farley '179 does not teach or suggest "a center region having a width of between about two inches and about twelve inches" because region 26 of Farley '179 is not "a center region traversing the mattress from the head end to the foot end" as recited in base claim 1.



**Fig. 2 of Farley '179**

Because Selman et al., Farley '849, and Farley '179, either alone or in combination, fail to teach or suggest "a center region traversing the mattress from the head end to the foot end," the combination of Selman et al. in view of Farley '849 or Farley '179 fails to teach or suggest all of the elements of Claims 1, 2, 4, 6-8, 18-20, 24-27, and 29. Therefore, there is no prima facie case of obviousness with respect to the combination of Selman et al. in view of Farley '849 or Farley '179.

For at least these reasons, Appellants respectfully submit that the Board should reverse the rejection of independent claims 1, 18, and 20 under 35 U.S.C. § 103(a). Because claims 2, 4, 6-8, 24-27, and 29 depend from, and are limited by, claims 1, 18, and 20, the Board should reverse the §103 rejection of these claims as well.

For an office action to establish a prima facie case of obviousness against a claim, a proposed modification of the prior art cannot render the prior art unsatisfactory for its intended purpose. MPEP § 2143.

Because it is clearly improper to redefine the function or purpose of the elements, i.e., the "head section" and "foot section," as defined in Selman et al., the Examiner's alleged interpretation can only be characterized as a modification of Selman et al. The Examiner apparently admits that a modification of Selman et al. is required by the following statement:

*For example, if one were to lay transversely on a bed, then the portion of the bed where the users head lies would be considered the head portion and the portion of the bed where the users feet lies would be considered the foot portion. (See Office Action, page 6)*

By the Examiner's own admission, the Examiner's interpretation, in one instance, involves an additional process step, not disclosed in any of the prior art references, whereby "one" must "lay transversely on a bed."

The Examiner alleged interpretation, as a modification of Selman et al., renders Selman et al. unsatisfactory for its intended purpose of providing a different amount of firmness to one portion of a person's body than another portion of the person's body. The Examiner's alleged interpretation is essentially the same type of interpretation that the CAFC rejected in *In re Gorden* (See *In re Gorden*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984)).

In the Office Action on page 7, the Examiner stated "...such limitation depends on ones perspective orientation, see attached drawings of orientation considered by examiner as. "head portion" and "foot portion" etc..." As stated by the Applicants on page 12 in the Office Action Response, dated 3/7/2006, *In re Gorden* rejects a prima facie case of obviousness based on a modification of the prior art created by viewing the prior art references from "one direction" (i.e., one perspective) and the claimed invention (e.g., claims 1, 2, 4, 6-8, 18-22, 24-27, and 29) from another direction. By changing the perspective position of the "head portion" and "foot portion," the Examiner admits that his prima facie case of obviousness is based on his "perspective orientation" which he illustrates in his own Marked-up drawings attached to the Office Action.

By changing the perspective position of the "head portion" and "foot portion," the prior art references Selman et al., Farley '849, and Farley '179 are rendered unsatisfactory for their intended purposes. For example, based on the Examiner's alleged interpretation," the "center portion 102" of Selman et al. would no longer be able to independently "bear the most weight during sleeping" (See Selman et al., col. 1, line 29) because a user must now lay in parallel to the "center portion 102" as shown in the Examiner's Marked-up drawings. In other words, the "center portion 102" would no longer independently support the heavier mid-section of a person while the "head portion 104" would no longer independently support the upper area or head of a person and while the "foot portion 106" would no longer independently support the lower area or feet of a person while laying on the "pad 100." The Examiner's alleged interpretation would also render Farley '849 and Farley '179 unsatisfactory for their intended purposes.

Because the Examiner's alleged interpretation renders the Selman et al., Farley '849, and Farley '179 unsatisfactory for their intended purposes, the proposed modification (e.g., Examiner's alleged interpretation) is improper. Therefore, the § 103 Rejection of claims 1, 2, 4, 6-8, 18-22, 24-27, and 29 should be overturned by the Board.

For an office action to establish a prima facie case of obviousness against a claim, obviousness cannot be based on impermissible hindsight reasoning. MPEP § 2145.

The Examiner's alleged interpretation includes a modification of Fig. 1 of Selman et al. where the "perspective orientation" of the "head portion" and "foot portion" are conceptually rotated to correspond to the sides of the pad 100. It is the Examiner alone, and no other reference including Selman et al., that teaches, suggests, or provides motivation for this modification. Thus, the Examiner's interpretation is based on impermissible hindsight reasoning and, therefore, the § 103 Rejection of claims 1, 2, 4, 6-8, 18-22, 24-27, and 29 should be overturned by the Board for this additional reason.

E. The Rejection of Claims 9-11 under 35 U.S.C. §103(a) over Selman et al. in view of Farley '849 or Farley '179 in further view of Klancnik

Claims 9-11 are finally rejected under 35 U.S.C. 103(a) over the combination of U.S. Patent No. 5,579,549 ("Selman et al.") in view of U.S. Patent No. 5,077,849 ("Farley '849) or U.S. Patent No. 6,003,179 ("Farley '179") in further view of U.S. Patent No. 4,092,749 ("Klancnik"). Appellants respectfully traverse this rejection and request that it be overturned.

Klancnik describes a mattress with support strips extending from the head to the foot ends near each of the two longitudinal edges of the unit. The strips are "secured to the first, second, and/or third outermost rows at the sides of the unit, which is the region where additional firmness is usually desired" (See Klancnik, col. 3, lines 2-5). The strips do not completely traverse the mattress from the head end to foot end and do not define a center region having a width of between about two inches and about twelve inches to prevent the formation of a central ridge because Klancnik is interested in solving the completely differently problem of edge stability.

For at least these reasons, Appellants respectfully submit that the Board should reverse the rejection of claims 9-11 under 35 U.S.C. § 103(a).

F. The Rejection of Claims 9, 12, and 13 under 35 U.S.C. §103(a) over Selman et al. in view of Farley '849 or Farley '179 in further view of Talbert et al. or Bonaddio et al. or Fultz et al.

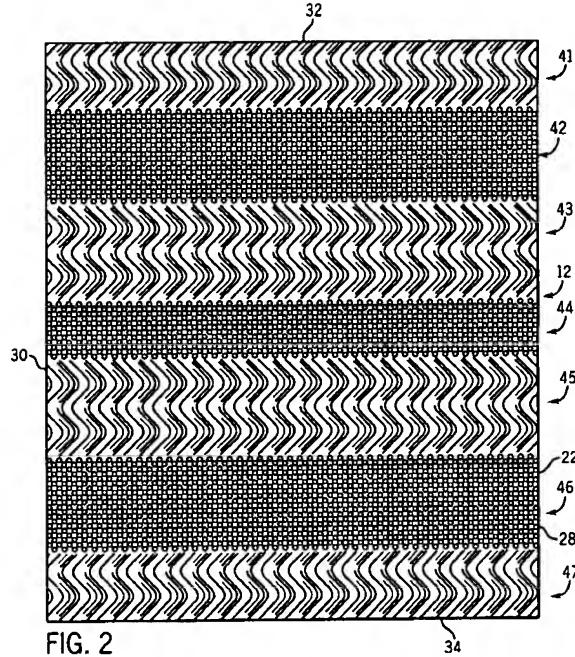
Claims 9, 12-13 are finally rejected under 35 U.S.C. 103(a) over the combination of U.S. Patent No. 5,579,549 ("Selman et al.") in view of U.S. Patent No. 5,077,849 ("Farley '849) or U.S. Patent No. 6,003,179 ("Farley '179") in further view of U.S. Patent No. 4,086,675 ("Talbert et al.") or U.S. Patent No. 5,537,699 ("Bonaddio et al.") or U.S. Patent No. 3,516,901 ("Fultz et al.").

Talbert et al., Bonaddio et al., or Fultz et al., either alone or in combination, do not provide the elements that are deficient from Selman et al., Farley '849, or Farley '179 as discussed above. Therefore, Appellants respectfully submit that the Board should reverse the rejection of claims 9 and 12-13 under 35 U.S.C. § 103(a).

G. The Rejection of Claims 1, 2, 4, 6-8, 18-22, 24-27 and 29 under 35 U.S.C. §103(a) over Nunez et al. in view of Farley '849 or Farley '179

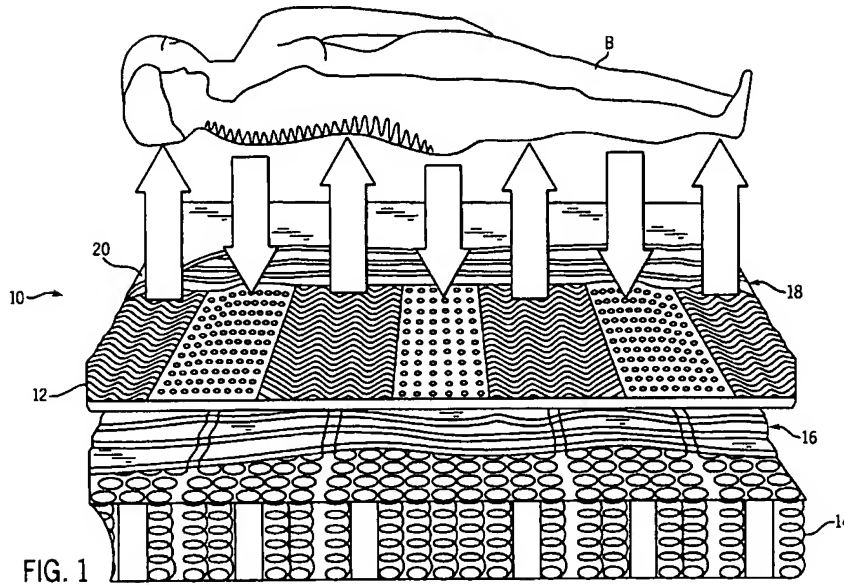
Claims 1, 2, 4, 6-8, 18-22, 24-27, and 29 are finally rejected under 35 U.S.C. 103(a) over the combination of U.S. Patent No. 6,041,459 ("Nunez et al.") in view of U.S. Patent No. 5,077,849 ("Farley '849) or U.S. Patent No. 6,003,179 ("Farley '179"). Appellants respectfully traverse this rejection and request that it be overturned for at least the reasons set forth below.

Nunez et al. disclose a convoluted foam cushion having "seven rectangular zones 41, 42, 43, 44, 45, 46, and 47" that traverse the body 22 from side to side, as opposed to traversing from a head end to a foot end (See Nunez et al., Fig. 2, col. 3, line 6-16).



**Fig. 2 of Nunez et al.**

Fig. 1 of Nunez et al. (below) shows the orientation of the zones to a body B laying on the mattress 10.



**Fig. 1 of Nunez et al.**

As Fig. 1 clearly shows, Nunez et al. do not teach or suggest "a center region traversing the mattress from the head end to the foot end" as recited in base claims 1, 18, and 20.

Because Nunez et al., Farley '849, and Farley '179, either alone or in combination, fail to teach or suggest "a center region traversing the mattress from the head end to the foot end," the combination of Nunez et al. in view of Farley '849 or Farley '179 fails to teach or suggest all of the elements of Claims 1, 2, 4, 6-8, 18-20, 24-27, and 29. Therefore, there is no prima facie case of obviousness with respect to the combination of Nunez et al. in view of Farley '849 or Farley '179.

For at least these reasons and the reasons discussed in Section D above with respect to Selman et al., Appellants respectfully submit that the Board should reverse the rejection of independent claims 1, 18, and 20 under 35 U.S.C. § 103(a) with respect to Nunez et al. Because claims 2, 4, 6-8, 24-27, and 29 depend from, and are limited by, claims 1, 18, and 20, the Board should reverse the § 103 rejection of these claims as well.

For the same reasons discussed in Section D above with respect to Selman et al., the Examiner's alleged interpretation renders the Nunez et al., Farley '849, and Farley '179 unsatisfactory for their intended purposes. Therefore, the proposed modification (e.g., Examiner's alleged interpretation) is improper and the § 103 Rejection of claims 1, 2, 4, 6-8, 18-22, 24-27, and 29 should be overturned by the Board.

For the same reasons discussed in Section D above with respect to Selman et al., the Examiner's interpretation is based on impermissible hindsight reasoning. Therefore, the § 103 Rejection of claims 1, 2, 4, 6-8, 18-22, 24-27, and 29 based in part on Nunez et al. should also be overturned by the Board.

H. The Rejection of Claims 9-11 under 35 U.S.C. §103(a) over Nunez et al. in view of Farley '849 or Farley '179 in further view of Klancnick

Claims 9-11 are finally rejected under 35 U.S.C. 103(a) over the combination of U.S. Patent No. 6,041,459 ("Nunez et al.") in view of U.S. Patent No. 5,077,849 ("Farley '849) or U.S. Patent No. 6,003,179 ("Farley '179") in further view of U.S. Patent No. 4,092,749 ("Klancnik"). Appellants respectfully traverse this rejection and request that it be overturned.

Klancnik does not provide the elements that are deficient from Nunez et al., Farley '849, or Farley '179. For at least these reasons, Appellants respectfully submit that the Board should reverse the rejection of claims 9-11 under 35 U.S.C. § 103(a).

I. The Rejection of Claims 9, 12, and 13 under 35 U.S.C. §103(a) over Nunez et al. in view of Farley '849 or Farley '179 in further view of Talbert et al. or Bonaddio et al. or Fultz et al.

Claims 9, 12-13 are finally rejected under 35 U.S.C. 103(a) over the combination of U.S. Patent No. 6,041,459 ("Nunez et al.") in view of U.S. Patent No. 5,077,849 ("Farley '849") or U.S. Patent No. 6,003,179 ("Farley '179") in further view of U.S. Patent No. 4,086,675 ("Talbert et al.") or U.S. Patent No. 5,537,699 ("Bonaddio et al.") or U.S. Patent No. 3,516,901 ("Fultz et al.").

Talbert et al., Bonaddio et al., or Fultz et al., either alone or in combination, do not provide the elements that are deficient from Nunez et al., Farley '849, or Farley '179 as discussed above. Therefore, Appellants respectfully submit that the Board should reverse the rejection of claims 9 and 12-13 under 35 U.S.C. § 103(a).

J. Conclusion

For the reasons given above, it is respectfully urged that the final rejection be reversed and that all pending claims be allowed.

Claims 1, 18, 20, 21, and 23 are patentable over the references of record. Claims 2, 4, 6-13, 19, 22, and 24-29, as dependent claims, are also patentable for at least the reasons that claims 1, 18, 20, and 21 are patentable.

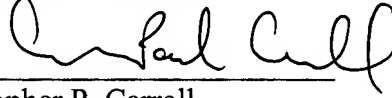


Appellants authorize the Commissioner to withdraw the extension of time fee from Deposit Account 18-1945. If there are any other fees not accounted for, Appellants authorize the Commissioner to charge the fee to Deposit Account 18-1945.

If there are any questions after reviewing this paper, the Examiner is invited to contact the undersigned at (617) 951-7000.

Dated: June 11, 2007

Respectfully submitted,

By 

Christopher P. Carroll

Registration No.: 55,776

FISH & NEAVE IP GROUP, ROPES & GRAY  
LLP

One International Place

Boston, Massachusetts 02110-2624

(617) 951-7000

(617) 951-7050 (Fax)

Attorneys/Agents For Applicant

(viii). CLAIMS APPENDIX

1. A mattress comprising:
  - a head end;
  - a foot end;
  - a first side and a second side; and
  - a center region traversing the mattress from the head end to the foot end, the center region including one or more materials other than a single air bladder that mitigate the emergence of a center ridge over repeated uses of the mattress, the center region having a width of between about two inches and about twelve inches.
2. The mattress of claim 1 wherein the center region is separated by an approximately equal distance from the first side and the second side.
3. (Canceled).
4. The mattress of claim 1 wherein the mattress is a king size mattress.
5. (Canceled).
6. The mattress of claim 1 wherein the center region has a firmness reduced or increased relative to other regions of the mattress.
7. The mattress of claim 1 wherein the mattress includes a quilted material over a sleeping surface thereof, the quilted material having a firmness in the center region reduced or increased relative to other regions of the mattress.
8. The mattress of claim 1 wherein the mattress includes an upholstery material over a sleeping surface thereof, the upholstery material having a firmness in the center region reduced or increased relative to other regions of the mattress.

9. The mattress of claim 1 wherein the mattress includes a core, the core having a firmness in the center region reduced or increased relative to other regions of the mattress.
10. The mattress of claim 9 wherein the core includes a plurality of open coil springs.
11. The mattress of claim 9 wherein the core includes a plurality of pocket coil springs.
12. The mattress of claim 9 wherein the core includes foam.
13. The mattress of claim 12 wherein the foam is viscoelastic foam.
- 14-17. (Canceled).
18. A mattress comprising:
  - a head end;
  - a foot end;
  - a first side and a second side;
  - a center region traversing the mattress from the head end to the foot end, the center region including one or more materials other than a single air bladder having a firmness reduced or increased relative to other regions of the mattress, the center region having a width of between about two inches and about twelve inches.
19. The mattress of claim 18 wherein the center region is separated by an equal distance from the first side and the second side.
20. A mattress comprising:
  - a head end;
  - a foot end;
  - a first side and a second side;

a center region separated from the first side and the second side and traversing the mattress from the head end to the foot end, the center region having a width of between about two inches and about twelve inches; and

a compensation means other than adjusting the inflation of a single air bladder for reducing or increasing a firmness of the center region relative to other regions of the mattress.

21. A method for manufacturing a mattress, the method comprising:

constructing a first region and a second region of one or more materials having a first firmness, the first region and the second region being configured to provide a sleeping surface to one or more users of the mattress;

constructing a center region between the first region and the second region, the center region being constructed of one or more materials other than a single air bladder that together have a second firmness different than the first firmness, the center region having a width of between about two inches and about twelve inches.

22. The method of claim 21 wherein the second firmness is reduced or increased relative to the first firmness.

23. A mattress comprising:

a head end;

a foot end;

a first side and a second side;

a center region traversing the mattress from the head end to the foot end, the center region including one or more adjustable members other than a single air bladder controllable to adjust the center region in response to an emerging center ridge, the center region having a width of between about two inches and about twelve inches.

24. The mattress of claim 1 wherein the one or more materials that mitigate the emergence of a center ridge are included in a upper surface of the mattress.

25. The mattress of claim 18 wherein the one or more materials having a firmness reduced or increased relative to other regions of the mattress are included in a upper surface of the mattress.
26. The mattress of claim 20 wherein the compensation means of the center region is included in a upper surface of the mattress.
27. The method of claim 21 wherein the one or more materials are included in a upper surface of the mattress.
28. The mattress of claim 23 wherein the one or more adjustable members are included in a upper surface of the mattress.
29. The mattress of claim 1 wherein the mattress is at least the size of a queen size mattress.

(ix). EVIDENCE APPENDIX  
None.

- (x). RELATED PROCEEDINGS APPENDIX  
None.